

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2969 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA

Sd/-

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 No

GUJARAT STATE WAREHOUSING CORPORATION

Versus

ANVARHUSAIN SULEMAN NIATAR

Appearance:

MR PJ KANABAR for Petitioner

MR PH PATHAK for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 07/09/2000

C.A.V. JUDGEMENT

1. By way of this petition under Articles 14, 226 and 227 of the Constitution, the petitioner has prayed for quashing the award of the Labour Court, Kalol in Reference (LCK) Case No.98 of 1991 and the order made in

Miscellaneous Application No.32 of 1999 dated 1.2.2000 whereby the first mentioned award was confirmed and not set aside.

2. The facts as far as relevant are that the respondent, a workman, had raised a demand and dispute for reinstatement and, after reference of the same, the parties had filed their respective statements. According to the respondent's own statement of claim, he had worked under the petitioner as a watchman from 1.8.1990 to 25.1.1991. According to the written statement of the petitioner, the respondent was employed on a temporary basis from 1.8.1990 to 6.12.1990 and thereafter he ceased to report for duty, and even otherwise the period of his appointment expired on 29.12.1990. However, it is noted in the same award that after the deposition of the respondent, the evidence of the petitioner was closed as no one remained present on behalf of the petitioner. Thus, an ex parte award ordering reinstatement with full backwages was made.

2.1 The respondent made an application for setting aside the ex parte award on the grounds that no notice of hearing was issued by the Labour Court after the deposition of the respondent and as the advocate engaged by the petitioner had expired, the petitioner could not have the knowledge and notice of the proceedings and the ex parte award. It was further stated by the petitioner that within one month of the knowledge of the ex parte award, the application for setting aside the same was filed. The petitioner produced letters dated 11.10.1995, 4.12.1995 and 18.6.1998 addressed to its advocate and calling for the necessary information regarding the Reference case pending in the Labour Court. In reply to the application of the petitioner, the respondent appears to have denied the averments and stated that the advocate of the petitioner has died almost after one year of the publication of the award. It is further stated that during the pendency of the Reference case, the advocate of the petitioner has not filed any application for adjournment on the ground of sickness and hence the application of the petitioner deserved to be dismissed on the ground of negligence as well as delay.

2.2 The Labour Court has considered the rival contentions in the impugned order made pursuant to the application for setting aside the ex parte award. It is noted that the petitioner had not produced any medical certificate regarding the sickness of its advocate or the death certificate to show the exact date of his death. Therefore, it is not believed that the advocate of the

petitioner could not remain present before the court when the Reference was proceeded ex parte. It is also held that the application was filed after about one year of the publication of the award and in absence of even an application for condonation of delay, the application for setting aside the award was required to be dismissed.

3. The learned counsel for the petitioner has pointed out the fact that, as averred by the petitioner, the application for setting aside the award was made within the period of limitation of one month from the knowledge of the award and, therefore, an application for condonation of delay was not required to be filed. It is also submitted that there was no negligence on the part of the petitioner as it had kept in touch with its advocate as evidenced by the letters referred to hereinabove. According to the last letter dated 18.6.1998, the petitioner had requested its advocate to convey the information regarding latest position of the case and also to move the Court to finalise the case at the earliest opportunity.

4. The learned counsel for the respondent has strongly objected to granting of any relief mainly on the grounds that the impugned orders and findings of facts are required to be upheld and that the petitioner cannot be allowed to take advantage of the vague plea of sickness of its advocate. Relying upon the judgment of this Court in DHIRAJLAL MADHAVLAL BHARATI v. R.S.SHUKLA [1981 GLH 89], it is pointed out that in case of gross and culpable negligence, setting aside an ex parte award would amount to harassment of the workman. The judgment of this court in N.D.PATEL & CO. v. MANUBHAI KARSANBHAI PARMAR [1984 LAB.I.C. 1245] is relied upon to submit that even where a notice in the prescribed form were not served upon the employer, the party concerned was bound to take cognizance and appear before the court concerned. The learned counsel has relied upon the observations of the Orissa High Court in MANAGEMENT, ORISSA ROAD TRANSPORT CO. LTD. v. WORKMAN T. BANGALI PATRA [1992 LAB.I.C. 1853] to submit that in absence of sufficient and justifiable ground for remaining absent, the ex parte award ought not to be interfered in exercise of the discretionary jurisdiction under Article 226 of the Constitution. Lastly, the judgment of the Hon'ble Supreme Court in SALIL DUTTA v. T.M. & M.C. PVT. LTD. [JT 1993 (4) SC 528] is relied upon to submit that non-appearance of a party or its advocate may be a part of delaying tactics and having adopted such a stand towards the Court, the party had no right to ask its indulgence. On an analogy of facts in that case, it is

submitted that putting the entire blame on the advocate and trying to make it out as if they were totally unaware of the proceedings is a theory which cannot be accepted.

5. Respectfully agreeing with the ratio of the judgments cited on behalf of the respondent, it has to be noted that in the facts of the present case, the impugned ex parte award and order entirely in favour of the respondent is based only on the fact that the deposition of the respondent remained unchallenged and no legal procedure was proved to have been followed by the petitioner before terminating the service. Even in absence of any evidence or assistance on behalf of the petitioner, it was the duty of the Labour Court to judicially decide the issues with the application of a judicious mind. What legal procedure was required to be followed in the case of the termination of the service of a temporarily employed workman when he had admittedly put in service of no more than about seven months, is not mentioned or observed in the award. Evidently, this is not a case where violation of any of the provisions of the Act under which the reference was made is even alleged. In such cases, while making an award of reinstatement and granting full backwages after a period of about seven years, it was the duty of the Labour Court to critically examine the evidence on record and justify the relief being granted while making an ex parte award. The Labour Court could also have issued a fresh notice of hearing to the petitioner if, as stated in the second impugned order, no one was remaining present in the Court throughout the period of pendency of the Reference after filing of the written statement. Under the provisions and scheme of the Industrial Disputes Act and the Rules made thereunder, the Labour Court has freedom to follow such procedure as it thinks fit. Such liberal and wide powers conferred upon the Labour Court in the matter of procedure are required to be exercised in the interest of justice and to avoid multiplicity of proceedings. In the facts of the present case, as seen earlier, the Labour Court has neither brought to bear judicial and judicious approach to the matter nor exercised its power to afford a reasonable opportunity of being heard to the petitioner in view of the long lapse of time and practically allowed the respondent to take disadvantage of the absence of the petitioner. Under such circumstances, this is a fit case to exercise the extraordinary jurisdiction of this Court to quash and set aside the award even without reference to the impugned order made in the application to set aside the award.

6. As the main impugned ex parte award was required

to be set aside, the learned counsel for the respondent was asked whether the original reference was required to be adjudicated afresh after quashing the second impugned order made in the application for setting aside the ex parte award. The response on behalf of the respondent was negative as no further or better evidence could have been produced on behalf of the respondent. Under such circumstances, no meaningful purpose would be served by remanding the matter back to the Labour Court.

7. In view of the circumstances and for the reasons discussed hereinabove, the petition is allowed; the impugned award made by the Labour Court, Kalol in Reference (LCK) No.98 of 1991 is quashed and set aside and, incidentally, the second impugned order made in Miscellaneous Application No.32 of 1999 by the same Court confirming the aforesaid order is also quashed. Rule is made absolute. In the circumstances, there shall be no order as to costs.

Sd/-

(KMG Thilake)

#####

STARTORDER

ITR9885J

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 98 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

and

Hon'ble MR.JUSTICE A.R.DAVE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

GUJARAT STATE FERTILIZERS CO.

Appearance:

MR B.B. Naik with Mr. Manish R Bhatt for Petitioner

MR M.J.SHAH FOR MR J. P.SHAH FOR Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

and

MR.JUSTICE A.R.DAVE

Date of decision: 07/09/2000

ORAL JUDGEMENT

Per Dave, J:-

At the instance of the revenue, the following three questions have been referred to this court under the provisions of section 256 (1) of the Income tax Act, 1961 (hereinafter referred to as 'the Act'):-

(i) Whether the tribunal has been right in law and on facts in allowing deduction in respect of guest house expenses as claimed by the assessee and not considering it to be hit by the provisions of section 37 (4) of the I.T Act, 1961?

(ii) Whether while computing the capital base for purpose of section 80J of the I.T Act, 1961, the work in progress is required to be included ?

(iii) Whether the tribunal has been right in law and on facts in granting investment allowance on compound wall fencing and training centre?

The learned counsel appearing for both the sides have submitted that all the aforesaid questions have been covered by the judgments delivered either by the Supreme court or by this court.

So far as question No.1 is concerned, it pertains to admissibility of expenses incurred on guest house. It has been decided in the case of CIT vs. Gaekwar Mills Company Limited, 193 ITR 734 that expenditure incurred in

respect of guest house is allowable expenditure as per the provisions of section 37 (4) of the Act. It has been held that the said expenditure is for providing facilities to the employees and merchants and if the said expenditure is not lavish or extravagant, it cannot be disallowed. In the circumstances, the said question is answered in favour of the assessee and against the revenue.

So far as question No.2 is concerned, it pertains to admissibility of benefits under the provisions of section 80J of the Act with regard to the capital employed in 'work in progress'. It has been held by the Supreme court in the case of CIT vs., Alcock Ashdown and company that while computing the capital employed, one has not only to consider the cost of plant and machinery but even the plant and machinery which are yet to be installed and the cost of workshop under construction are also to be considered. In the circumstances, relying upon the said principle laid down by the Supreme court, the capital employed in 'the work in progress', will have to be considered while computing the capital employed for the purpose of section 80J. In the circumstances, question No.2 is answered in favour of the assessee and against the revenue.

Question No.3 can be divided into two parts which pertains to grant of investment allowance on compound wall/ fencing and grant of investment allowance on training centre.

So far as cost of compound wall/fencing is concerned, investment allowance is not admissible for the reason that the said compound wall/fencing covers the factory building. Factory building is not a plant and, therefore, expenditure incurred by the assessee for construction of compound wall/fencing is not admissible for the purpose of calculating investment allowance. In the circumstances, the first part of question No.3 is answered against the assessee and in favour of the revenue.

So far as the second portion of question No. 3 is concerned, it pertains to consideration of cost of training centre for the purpose of investment allowance. It has been held by this court in the assessee's own case in CIT vs. Gujarat State Fertilizers Co. Ltd., 219 ITR 550 that the amount of expenditure incurred for the purpose of erection of training centre is admissible for the purpose of grant of investment allowance. In view of the said judgment of this court, the second portion of

question No.3 is decided in favour of the assessee and against the revenue.

Thus, questions Nos. 1 and 2 are decided in favour of the assessee and against the revenue. So far as the third question is concerned, first portion of the said question which pertains to investment allowance on compound wall/fencing is decided against the assessee and in favour of the revenue; whereas, so far as investment allowance on the cost of construction of training centre is concerned, it is decided in favour of the assessee and against the revenue.

The Reference is accordingly disposed of, with no order as to costs.

(D. M. Dharmadhikari, C.J.)

(A. R. Dave, J.)

parekh